United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: July 24, 2003

TO : Elizabeth Kinney, Regional Director Harvey A. Roth, Regional Attorney

Gail Moran, Assistant to the Regional Director

Region 13

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Local 705, International Brotherhood

of Teamsters (Bell Fuels, Inc.) 554-1475-5020 Case 13-CB-17312-1 554-1475-5030

This case was submitted for advice as to whether the Union's response to Employer information requests regarding fringe benefit funds jointly administered by the Union and employers, during bargaining for a successor agreement in which the Union proposed changes to the contractual fund provisions, violated Section 8(b)(3). We agree with the Region that complaint should issue, absent settlement, alleging that the Union was obligated to provide the Employer with any requested relevant information in its possession, and also alleging that, where the Employer unsuccessfully attempted to obtain information from the funds, the Union was obliged to at least investigate alternative sources for information sought by the Employer or explain why such information was unavailable.

FACTS

Briefly, prior to negotiations for a successor agreement, the Employer requested in several letters to Local 705 (the Union)'s secretary-treasurer that the Union provide information regarding the status of the Local 705 pension fund, whether the fund had any unfunded liability, and that the Union provide financial statements of the Local 705 health and welfare fund and copies of the summary plans and policies of the pension and health and welfare fund. The parties' contract provided for defined Employer contributions to those funds; the funds were described as Section 302(c) funds established pursuant to trust agreements (and therefore funds administered equally by Union and employer trustees). The Union was proposing changes in the Employer fund contributions for the successor agreement.

The Employer also asked the Local 705 pension fund directly if there was an Employer withdrawal liability;

while the pension fund administrator provided that information, the fund administrator did not respond to a follow-up letter from the Employer asking for a copy of the fund's annual report and enclosing a check for the report.

After there was no response from the Union to the Employer's information requests, the Employer repeated them in a letter to the Union's secretary-treasurer dated November 8, 2002. At the first bargaining session on December 17, prior to which the Union had provided none of the information, the Employer repeated its request for fund information to the Union's negotiator. The negotiator responded that he had not received any prior information requests, and that such requests should be made to the Union's secretary-treasurer (to whom the Employer had sent its previous requests).

At the next bargaining session, the Employer again asked for the fund information. The Union's negotiator responded that the Employer should stop asking for insurance information - that the negotiator couldn't get it. When the Employer asked why the negotiator couldn't get the information from the funds administrator, the negotiator said he wasn't going to do it.

ACTION

We agree with the Region that complaint should issue, absent settlement, alleging that the Union was obligated to provide the Employer with any requested relevant information in its possession, and also alleging that, where the Employer unsuccessfully attempted to obtain information from the funds, the Union was obliged to at least investigate alternative sources for information requested by the Employer or explain why such information was unavailable.

It is disingenuous for the Union to claim without explanation that it did not have certain information the Employer requested, such as the summary plans and policies of the funds, when the Union was proposing continued fund coverage at increased Employer contributions for the unit employees in the negotiations for a successor contract. While there is no evidence that the Union is in de facto control of the funds, which would create a Union obligation to provide fund information, the Board has held that where

¹Cf. <u>Teamsters Local 122 (August A. Busch & Co.</u>), 334 NLRB 1190, n. 4 and 1227-29 (2001).

²See, e.g., <u>Food & Commercial Workers Local 1439 (Layman's Market)</u>, 268 NLRB 780, 781 (1984).

an employer has attempted unsuccessfully to obtain information from independent funds, a union must investigate alternative sources of fund information requested by the employer or explain its unavailability. Hospital Employees District 1199E (Johns Hopkins), 273 NLRB 319, 320 (1984). The Board stated that "minimum standards of good faith" required a union to do at least that much.³

Here, the Employer had sought information from the funds and while the funds did provide the Employer's pension withdrawal liability, the funds did not respond to a request for an annual financial statement, information for which the Employer had also asked the Union. The Union did not respond to the Employer's repeated written requests for information relating to the funds prior to negotiations and, when the Employer repeated its request at the first negotiating session, the Union claimed not to have received any requests. At the next session the Union stated it wasn't going to ask the funds for the information. Such outright stonewalling does not meet the "minimum standards of good faith" in investigating alternative sources of information that the Employer had unsuccessfully sought from the funds, or explaining why the information was unavailable. Accordingly, a Section 8(b)(3) complaint should issue, absent settlement.

B.J.K.

³273 NLRB at 320, citing <u>General Electric Co.</u>, 150 NLRB 192, 261 (1964).